

E-132, 299/SA-89-192REQUESTING ENFORCEMENT ACTION BY THE ATTORNEY
GENERAL

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Patrice Vick	Commissioner

In the Matter of a Complaint of People's Cooperative Power Association, Inc. Against the City of Rochester Regarding the Provision of Interim Service to Facilities Known as B&F Truck Stop and Rochester Rent-All

ISSUE DATE: December 21, 1989

DOCKET NO. E-132, 299/SA-89-192

ORDER REQUESTING ENFORCEMENT
ACTION BY THE ATTORNEY GENERAL

PROCEDURAL HISTORY

On November 1, 1989 the Commission issued its ORDER REQUIRING CESSATION OF PROVISION OF SERVICE AND REQUIRING THE CITY OF ROCHESTER TO SHOW CAUSE in the above-entitled matter. That Order found that the City of Rochester (the City) had extended electric service to a customer within the assigned service area of another utility in violation of Minn. Stat. §§ 216B.40 and .44 (1988). The Order required the City to cease providing such service immediately. It also required the City to show cause why the Commission should not find it had knowingly and intentionally violated Minnesota's assigned service area statutes and why the Commission should not refer the violation to the Attorney General for penalty proceedings under Minn. Stat. §§ 216B.57 et seq.

A copy of the November 1 Order is attached hereto and labelled Attachment A.

The City filed a response asserting the Commission should not refer the violation for penalty proceedings for three reasons:

1. The violation preceded the Commission's decision in what is commonly known as the Victory Baptist Church case¹, which the City views as providing essential clarification on the Commission's interpretation of the service area statutes;

¹ In the Matter of a Complaint of People's Cooperative Power Association, Inc., Against the City of Rochester, ORDER AFTER RECONSIDERATON CLARIFYING ORDER, Docket No. E-132, 299/SA-88-660 (February 21, 1989).

2. The Commission cannot determine that the violation was knowing and intentional without contested case proceedings;
3. The City and the utility whose customer the City was found to have unlawfully served are engaged in contested case proceedings to determine appropriate compensation for the City's acquisition of this and other customers. Since the City intends to acquire the right to serve eventually and to compensate the other utility accordingly, no harm justifying penalty proceedings has been done.

The matter came before the Commission on November 21, 1989.

FINDINGS AND CONCLUSIONS

The Commission finds that the City knowingly and intentionally violated the assigned service area statutes and will refer the matter to the Attorney General for penalty proceedings.

The facts surrounding the extension of service are not disputed. On February 9, 1989 the City extended service to a lighted billboard located within the exclusive service area of People's Cooperative Power Association, Inc. (People's). The billboard, situated on property owned by B&F Truck Stop, had been served by People's in the past. People's had disconnected service at the customer's request during renovation of the truck stop facilities. When the renovation had been completed, the customer requested and received service from the City instead of People's. The City knew that the billboard was located within People's' assigned service area.

The Commission does not believe that this extension of service could be considered legal under any reasonable interpretation of the service area statutes, even before the issuance of the Victory Baptist Church decision. Victory Baptist clarified the obligations of municipalities intending to extend service into previously undeveloped areas within their corporate boundaries. That decision made it clear that the absence of an identifiable customer actually receiving service from another utility did not necessarily entitle the municipality to serve or obviate the need for compensation.

Here, however, the City extended service to an identifiable customer, who was clearly within the assigned service area of another utility, and who had clearly received service from the other utility in the past. This was a blatant violation of Minn. Stat. § 216B.40 (1988), which prohibits utilities from serving customers within the assigned service areas of other utilities, and of Minn. Stat. § 216B.44 (1988), which establishes a procedure municipal utilities must follow before acquiring the customers of other utilities.

The Commission does not agree with the City that contested case proceedings are necessary before referring this violation for penalty proceedings. Contested case proceedings are necessary only when material facts are in dispute. Here the City admitted the elements of the offense in its answer. The answer admitted the lighted billboard at issue lies within the exclusive service territory assigned to People's. The answer admitted People's had served the billboard before the renovation and

continued to serve the truck stop proper during and after the renovation. The answer admitted People's contacted the City in late February, informed the City the billboard lay within People's service area, and asked the City to stop serving the billboard. The answer admitted the City continued to deliver service to the billboard.

The City has made a conclusory denial that it knowingly and intentionally violated the statute and maintains that such a denial establishes a need for contested case proceedings. The Commission disagrees. The City has not alleged it extended service to the billboard out of ignorance, by accident, under coercion, or under any other circumstances which would call into question the knowing and intentional nature of this action. The Commission assumes the City intended the natural and foreseeable consequences of its actions, i.e., the violation of People's' exclusive service area and of the statutes prohibiting such violations. The Commission concludes it is not necessary to convene contested case proceedings before referring this matter to the Attorney General.

Finally, the City argued that referring this matter to the Attorney General would be an inefficient use of resources, given the fact that the City has stated its intention to acquire the right to serve this billboard, and is engaged in contested case proceedings to determine appropriate compensation for this and other customers. The Commission does not consider it a waste of resources to refuse to tolerate knowing and intentional violations of the statutes it is charged to enforce. To the contrary, the Commission believes it has a duty to protect the integrity of the regulatory process by referring such violations to the Attorney General.

Furthermore, it is by no means certain the City will acquire these customers. The pending contested case proceedings will determine what constitutes reasonable compensation for the City's acquisition of these customers. If the City considers that compensation too high, it can decline to acquire the territory. Even the City's most sincere intentions to acquire the territory, then, could be thwarted if the outcome of those proceedings differs substantially from the City's expectations. The Commission therefore does not view the existence of the compensation proceeding as good reason for not referring this statutory violation to the Attorney General.

ORDER

1. The Commission declares that the City of Rochester's extension of service to the lighted billboard constituted a knowing and intentional violation of Minn. Stat. §§ 216B.40 and .44 (1988).
2. The Commission requests that the Attorney General determine appropriate penalties and initiate an action to recover penalties under Minn. Stat. §§ 216B.57 et seq. (1988).
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Lee Larson
Acting Executive Secretary

(S E A L)